

DOCUMENT # 5278
ADOPTED
MARCH 15, 1990

BOSTON REDEVELOPMENT AUTHORITY

SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF ATRIUM ON COMMONWEALTH ASSOCIATES FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS (Ter. Ed.) CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AS AMENDED, TO BE UNDERTAKEN AND CARRIED OUT BY A LIMITED PARTNERSHIP FORMED UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 109, AND APPROVAL TO ACT AS AN URBAN REDEVELOPMENT LIMITED PARTNERSHIP UNDER CHAPTER 121A

A. Prior Proceedings. Reference is made to the following.

1. On June 25, 1981, the Boston Redevelopment Authority (the "Authority") voted to adopt a Report and Decision (the "Report and Decision") on a project known as Atrium on Commonwealth (the "Project"). Such vote was approved by the Mayor of the City of Boston (the "Mayor") on July 17, 1981 and the vote as approved was filed with the Clerk of the City of Boston (the "City Clerk") on July 20, 1981. The Project, as more particularly described in the Report and Decision, consisted of the construction and management of 218 apartments, commercial space, a restaurant and certain uses incidental thereto.

2. As of December 9, 1982, a certain Agreement under Chapter 121A, Section 6A, was executed by and between the Atrium On Commonwealth Associates, a Massachusetts limited partnership and the designated Chapter 121A entity in the Report and Decision ("Atrium Associates"), and the City of Boston (the "6A Contract").

3. On June 29, 1989, the Authority voted to adopt a First Amendment to the Report and Decision (the "First Amendment") which in part authorized the execution of an amendment to the 6A Contract with the City of Boston ("6A Contract Amendment") and imposed, as a rule and regulation, that Atrium Associates enter into an Amended and Restated Regulatory Agreement with the Authority in accordance with Chapter 121A, Section 18C ("Amended Regulatory Agreement"). Such vote was approved by the Mayor on July 24, 1989 and the vote as approved was filed with the City Clerk on July 25, 1989. The Report and Decision and First Amendment are referred to hereinafter

collectively as the "Amended Report and Decision".

4. As of October 29, 1989, the 6A Contract Amendment and Amended Regulatory Agreement were executed by Atrium Associates and respectively the City of Boston and the Authority. Both the 6A Contract Amendment and the Amended Regulatory Agreement were filed with the City Clerk on November 1, 1989 and both are incorporated herein by reference.

B. Amended Regulatory Agreement. Section 4 of the Amended Regulatory Agreement, entitled "Financing/Mortgages", requires approval by the Authority of all future Project financing or refinancing other than as previously authorized or in existence as of July 25, 1989. Section 9(b) of the Amended Regulatory Agreement, entitled "Voluntary Transfer of Partnership Interests," requires approval by the Authority of any partnership interest, whether general or limited.

C. Application for Approvals Required by Amended Regulatory Agreement. By letter dated December 22, 1989, from Bernard F. Shadrawy, Jr., counsel for Atrium Associates, approval was requested of a refinancing of the Project's existing first mortgage in the amount of \$17,250,000 with Equitable Life Insurance Society of the United States ("Equitable Life") and of the transfer of the General Partner Interest of Harold Brown to Hamilton Management Corporation, a Massachusetts corporation. In connection with, and as evidence of, the transfer of the general partner interest to Hamilton Management Corporation, Atrium Associates submitted to the Authority a copy of an "Amendment to Certificate of Formation of Atrium On Commonwealth Associates Limited Partnership," which was filed with the Secretary of State's Office on November 10, 1989 ("Certificate of Limited Partnership Amendment"). Collectively, both of the beforementioned documents constitute the "Application" and they are attached hereto and incorporated as a part of this Second Amendment.

D. Authority Action. In acting hereunder, the Authority has

considered the Application itself, and all documents and exhibits filed therewith and/or referred to therein, and other materials sufficient in the Authority's judgment to enable it to act hereunder.

E. Decision. The Authority hereby acts as follows:

1. Approval is granted in accordance with the Amended Regulatory Agreement, Section 4, of a refinancing with Equitable Life of the existing first mortgage loan on the Project in an amount not to exceed \$17,250,000. The existing first mortgage which secured a loan in the original principal amount of \$13,000,000 was closed on or about May 2, 1984. By this approval, actions taken by Atrium Associates and/or its General Partners prior to this date in connection with, or to secure, such refinancing are hereby confirmed, ratified and approved in all respects.

2. Approval is granted in accordance with the Amended Regulatory Agreement, Section 9(b), of the transfer of the 10 General Partner Units of Atrium Associates held by Harold Brown to Hamilton Management Corporation, as evidenced by the Certificate of Limited Partnership Amendment. By this approval, actions taken prior to this date in connection with the transfer of such general partner interest are hereby confirmed, ratified and approved in all respects.

3. In connection with the Project refinancing referred to in E(1) above, the Director is hereby authorized to execute an estoppel certificate, or like instruments, as may be requested by the lender, Equitable Life, with regard to compliance with the terms and conditions of the Amended Regulatory Agreement and the Amended Report and Decision, as he may determine in his discretion.

4. No approval of any physical changes to the existing building or uses of the Project, as previously authorized, were requested in the Application and none are granted herein. The Project described in, and the rules and regulations imposed in, the

Amended Report and Decision remain in full force and effect.

5. Severability. In the event any provision of this Second Amendment shall be held invalid or unenforceable on its face or as applied by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

SHADRAWY & RABINOVITZ

A PROFESSIONAL ASSOCIATION
OF
ATTORNEYS AT LAW

BERNARD F. SHADRAWY, P.C.
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December 22, 1989

Mr. Paul McCann, Esquire
Deputy Director
Boston Redevelopment Authority
Ninth Floor, City Hall
Boston, MA 02210

RE: Atrium on Commonwealth Associates

Dear Mr. McCann:

Atrium on Commonwealth Associates (Atrium) is a party to a contract pursuant to M.G.L. c.121A for the property located at 1079-1089 Commonwealth Avenue, Allston, Massachusetts. Atrium has recently executed a commitment with the Equitable Life Insurance Company for refinancing in the amount of \$17,250,000. The refinancing will be for a term of five years at an interest rate of 9.125% and will be a first mortgage on the property. There will be no change in the lender or in the collateral given only in the amount of the first mortgage loan.

The proceeds of this loan will be used first to repay the existing loan, which carries an interest rate of 12.75% and thirty-five year amortization schedule. By repaying the existing loan the annual debt service will be reduced by approximately \$120,000. The loan proceeds will also be used to repay back taxes owed on this property as part of an agreement between the Atrium, the BRA and the City.

In connection with the refinancing the lender has requested that the B.R.A. issue an estoppel letter indicating that Atrium has complied with the terms of the Regulatory Agreement and is not in violation of any of its terms.

Additionally, the Atrium is requesting the approval by the BRA of the transfer of the General Partner Harold Brown's, interest in the project to Hamilton Management Corporation, a Massachusetts Corporation. On November 10, 1989 a Certificate of Amendment to the certificate of Formation of Atrium on Commonwealth Associates Limited Partnership was filed with the

SHADRAWY & RABINOVITZ

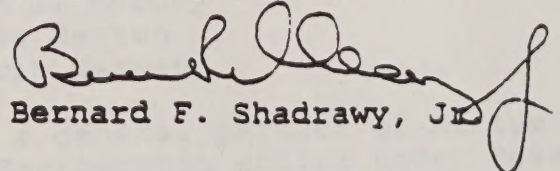
Mr. Paul McCann
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December 22, 1989

Secretary of State of the Commonwealth of Massachusetts changing the general partners from Harold Brown and Petros Palandjian to Hamilton Management Corporation ("HMC") and Petros Palandjian. There have always been 2,000 partnership units outstanding, 20 of which were and are general partnership units. Harold Brown sold his 10 general partnership units to HMC as a step in his estate planning to assure a continuation of managements after his death. Petros Palandjian still retains his 10 general partnership units. Harold Brown owns 1098 of the 1101 issued and outstanding shares of HMC or more than 99.7% ownership of HMC. He is chief executive officer of HMC. The other three outstanding shares of HMC are owned by Harold Brown's three key employees. Harold Brown still retains his 1075.57 limited partnership units so that he still owns more than 50% in interest in the Partnership. Therefore, there has been no substantial change in the general partners, Harold Brown still being effectively a general partner pursuant to his ownership interest in HMC.

Please consider this an application to the Boston Redevelopment Authority Board for approval of the refinancing and change in general partners as originally stated in M.G.L. Chapter 121A Agreement and request for an estoppel letter. As the refinancing is necessary to pay the City for back taxes we would appreciate your expedited processing of this request.

Please advise us as to the most expeditious manner by which to obtain the approvals and estoppel letter and if anything further is required.

Very truly yours,


Bernard F. Shadrawy, Jr.

BFS/nmd

FILED

AMENDMENT TO CERTIFICATE OF FORMATION
OF
ATRIUM ON COMMONWEALTH ASSOCIATES LIMITED PARTNERSHIP

NOV 10 1989

The undersigned being the general partners and all of the limited partners of Atrium on Commonwealth Associates Limited Partnership, do hereby amend the Limited Partnership Certificate of Formation as follows:

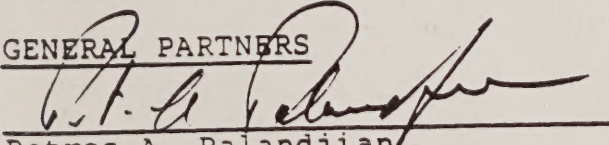
1. The original Certificate of Formation of Limited Partnership was filed with the Secretary of the Commonwealth on November 12, 1981 and Amendments thereto were filed on March 31, 1982, July 28, 1982, December 15, 1984, January 24, 1985, December 6, 1985 and November 7, 1986.

2. Hamilton Management Corporation has succeeded Harold Brown as one of the two general partners of the limited partnership.

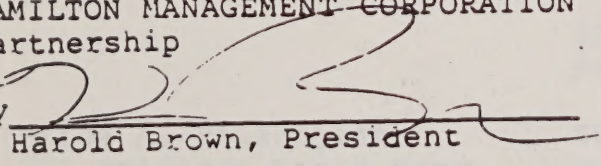
3. The Schedule A annexed hereto replaces the originally filed Schedule A of the Certificate of Formation of such partnership and sets forth the name and business address of each partner and number and class of partnership units held by each partner and total contribution therefor.

IN WITNESS WHEREOF the undersigned partners have hereunto subscribed their names and set their seals as of the 30th day of September, 1987.

GENERAL PARTNERS


Petros A. Palandjian

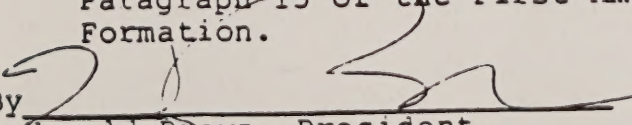
HAMILTON MANAGEMENT CORPORATION
Partnership

By 
Harold Brown, President

LIMITED PARTNERS

Harold Brown
Petros A. Palandjian
P&S Family Limited Partnership
Monterosa Realty Limited Partnership
R.J. Samia Associates
Salvatore Macera
Robert A. Keezer
Joan D. Funk
Richard Katzoff
Amin J. Khoury
James Marten
Melvin Herman

By: Hamilton Management Corporation, a general partner of Atrium on Commonwealth Associates Limited Partnership acting under Power of Attorney set forth in Paragraph 21.1 of the First Amended and Restated Contract of Limited Partnership and described in Paragraph 15 of the First Amended and Restated Certificate of Formation.

By 
Harold Brown, President

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ATRIUM, AMC

SCHEDULE A

ATRIUM ON COMMONWEALTH ASSOCIATES LIMITED PARTNERSHIP

<u>Name & Business Address</u>	<u>Number & Class of Units</u>	<u>Total Consideration</u>
<u>GENERAL PARTNERS</u>		
Hamilton Management Corporation 39 Brighton Avenue Allston, MA	10 General Partner- ship Units	\$ 1,000.00
Petros A. Palandjian 1270 Soldiers Field Road Brighton, MA	10 General Partner-	\$ 1,000.00
<u>LIMITED PARTNERS</u>		
Harold Brown 39 Brighton Avenue Allston, MA	262 Class A Limited Partnership Units	\$ 58,001.56
	and	
	87.5 Class C Limited Partnership Units	\$100,000.00
	6.25 Class E Limited Partnership Units	\$ 9,375.00
	720 Class G Limited Partnership Units	\$720,000.00**
Petros A. Palandjian 1270 Soldiers Field Road Brighton, MA	60 Class B Limited Partnership Units	\$ 21,000.00
P&S Family Limited Partnership 1270 Soldiers Field Road Brighton, MA	80 Class B Limited Partnership Units	\$ 28,000.00

<u>Name & Business Address</u>	<u>Number & Class of Units</u>	<u>Total Consideration</u>
Monterosa Realty Limited Partnership 1270 Soldiers Field Road Brighton, MA	262.5 Class C Limited Partnership Units	\$300,000.00
	and	
	18.75 Class E Limited Partnership Units	\$ 28,125.00
R.J. Samia Associates The Addison Suite 805 South 1500 South Ocean Blvd. Boca Raton, FL 33432	60 Class F Limited Partnership Units	\$ 38,500.00
	and	
	40 Class G Limited Partnership Units	\$ 40,000.00**
Salvatore Macera One Longfellow Place Boston, MA	100 Class D Limited Partnership Units	\$187,500.00
Robert A. Keezer One Court Street Boston, MA	100 Class D Limited Partnership Units	\$187,500.00
Joan D. Funk 45 Tennyson Road Wellesley, MA	34 Class D Limited Partnership Units	\$ 63,750.00
Richard Katzoff 17 Powdermill Road Framingham, MA	34 Class D Limited Partnership Units	\$ 63,750.00
Amin J. Khoury 437 Turnpike Road Canton, MA	25 Class E Limited Partnership Units	\$ 37,500.00
James Marten 437 Turnpike Road Canton, MA	50 Class E Limited Partnership Units	\$ 75,000.00
Melvin Herman 39 Brighton Avenue Allston, MA	40 Class G Limited Partnership Units	\$ 40,000.00**

** The Class G Limited Partnership Units have been issued by the partnership for transfer to the Partnership of its real estate, which the partnership has valued at \$1,000.00 per Unit.

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ATRIUM.SCA

MEMORANDUM

MARCH 15, 1990

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: KEVIN MORRISON, DEPUTY GENERAL COUNSEL
PAUL MCCANN, EXECUTIVE ASSISTANT TO THE DIRECTOR

SUBJECT: SECOND AMENDMENT TO REPORT AND DECISION ON THE ATRIUM ON
COMMONWEALTH ASSOCIATES CHAPTER 121A PROJECT

EXECUTIVE

SUMMARY: Request adoption of a Second Amendment to the Report and Decision on the Atrium On Commonwealth Chapter 121A Project (the "Project") to authorize, as required by the Amended and Restated Regulatory Agreement, a Project refinancing, and a transfer of the general partner interest of one of the General Partners of the 121A entity, Atrium On Commonwealth Associates Limited Partnership.

Project Background

On June 29, 1989, the Authority approved a First Amendment to the Report and Decision (the "First Amendment") on the Atrium On Commonwealth Chapter 121A Project (the "Project"). The Project, as originally approved in 1981, consisted of 218 market-rate apartments, commercial and office space, a restaurant and residential uses. The First Amendment did not authorize changes in any respect to the Project but approved an amendment to the existing 6A Contract to reduce the annual payment-in-lieu of tax to the City of Boston. This reduction was to cover in part the construction cost of the new 3-story facility for the Fenway Community Health Center, Inc. on Haviland Street in the Fenway neighborhood ("Fenway Health Center").

The First Amendment imposed on the Project, as a rule and regulation, that the 121A entity, Atrium On Commonwealth Associates Limited Partnership ("Atrium Associates"), enter into an Amended and Restated Regulatory Agreement (the "Amended Regulatory Agreement"). This Amended Regulatory Agreement was executed as of October 26, 1989 and in part required approval by the Authority of any Project refinancing and any transfer of partnership interests, whether general or limited.

Application for Second Amendment to Report and Decision

By letter, dated December 22, 1989, Bernard F. Shadrawy, Jr., counsel for Atrium Associates, submitted an application to request approval of a refinancing arrangement for a new first mortgage loan in the amount of \$17,250,000 with the existing Project lender, Equitable Life Assurance Society of the United States ("Equitable Life") and the transfer of the General Partner interest of Harold Brown in Atrium Associates to Hamilton Management Corporation.

The refinancing arrangement replaces a 1984 first mortgage loan in the original principal amount of \$13,000,000. The net refinancing proceeds will cover part of the construction costs incurred for the Fenway Health Center and certain 6A payments to the City of Boston. Attached is a breakdown of the use of the refinancing proceeds as provided by Atrium Associates.

The transfer of Harold Brown's General Partner interest in Atrium Associates (10 General Partner Units) is to Hamilton Management Corporation, of which Brown is the principal stockholder. No Project changes, i.e., changes in uses or to the physical structure, have been requested.

Approval of Second Amendment

In the opinion of the Office of General Counsel, the approvals requested do not constitute, individually or collectively, a "fundamental change" to the Project and no public hearing is required.

It is recommended that the Authority adopt the Second Amendment to the Report and Decision on the Atrium On Commonwealth Chapter 121A Project, as presented.

An appropriate vote follows:

VOTED: That the document presented at this meeting and entitled, "SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF ATRIUM ON COMMONWEALTH ASSOCIATES FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS (Ter. Ed.) CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AS AMENDED, TO BE UNDERTAKEN AND CARRIED OUT BY A LIMITED PARTNERSHIP FORMED UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 109, AND APPROVAL TO ACT AS AN URBAN REDEVELOPMENT LIMITED PARTNERSHIP UNDER CHAPTER 121A," be and hereby is approved and adopted.

ATRIUM REFINANCING

Loan Amount	\$17,250,000
Payoff Mortgage	12,410,000
Points	<u>750,000</u>
Net	\$ 4,090,000
Atrium Waterproofing	<u>250,000</u>
Net	\$ 3,840,000

FENWAY HEALTH CENTER

Building Costs	\$ 1,200,000
Held for Payments	<u>1,100,000</u>
Subtotal:	\$ 2,300,000
121A Taxes	
Atrium	1,255,000
MBH	<u>285,000</u>
Subtotal:	\$ 1,540,000
Total:	<u>\$ 3,840,000</u>
Balance	- 0 -